

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Frank Lill & Son, Inc., )  
Plaintiff, )  
v. ) Civil Action No. 05-10122 RGS  
Medical Area Total Energy )  
Plant, Inc., )  
Defendant. )  
\_\_\_\_\_  
)

MOTION OF MEDICAL AREA TOTAL ENERGY PLANT, INC.  
FOR A RULING THAT ITS DOCUMENT PRODUCTION REQUESTS  
AND INTERROGATORIES WERE TIMELY FILED

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Now comes the defendant, Medical Area Total Energy Plant, Inc. (MATEP), and moves that the Court issue an order in this case, establishing that MATEP's First Set of Document Production Requests (served upon the plaintiff Lill on December 7, 2005) and MATEP's First Set of Interrogatories (served upon the plaintiff Lill on December 8, 2005) were timely filed, and states as its reasons therefore as follows:

(1) MATEP's First Set of Document Production Requests were served upon Lill on December 7, 2005, and MATEP's

First Set of Interrogatories were served upon plaintiff Lill on December 8, 2005.

(2) Both of these discovery requests were timely served under the then-existing Electronic Clerk's Notes of the proceedings before Judge Stearns on June 6, 2005, a copy of which is attached as Attachment "A" to this motion. As shown therein as of December 7 and 8, 2005, the only deadline relating to paper discovery was that it had to be completed (e.g., responded to) by March 2, 2006, which implied that it had to be propounded by late January, 2006. MATEP's discovery requests were served in plenty of time to be answered by Lill by March 2, 2006. In serving its interrogatories and document requests when it did, MATEP was relying on the June 6, 2005 Electronic Notes as setting forth the discovery schedule.

(3) Counsel for plaintiff Lill, in a letter dated December 8, 2005 (attached as Attachment "B" to this motion) claimed that MATEP's discovery requests were untimely, arguing that the parties' original Proposed Joint Discovery Plan filed on June 1, 2005 had been adopted in its entirety by Judge Stearns at the June 6, 2005 Scheduling Conference, despite the fact that the then-existing Electronic Clerk's Notes indicated the contrary, and despite the fact that the

Electronic Notes differ from the Joint Statement in several respects (i.e., in setting no discovery schedule for Counts 1, 2 and 3, which the court ordered to mediation; in setting, for Counts 4 and 5, no deadline for propounding or responding to "paper" discovery, other than the general discovery deadline of March 2, 2006; in setting no deadline for Venue and Jurisdiction Motions, Motions for Joinder of Parties or Motions to Preclude Expert Testimony; and in setting no trial date). The undersigned counsel for MATEP do not remember Judge Stearns adopting (or in fact, even addressing) the schedule in the Joint Statement. In any event, they regarded the detailed and specific Electronic Notes as an authoritative and complete statement of Judge Stearns's actions, deserving of reliance. Since the latter contained no deadline for paper discovery prior to the March 2, 2006 general discovery deadline, they believed and believe that their discovery requests were timely.

(4) Accordingly, counsel for defendant MATEP, in a letter dated December 9, 2005 (attached as Attachment "C" to this motion) pointed out to counsel for Lill that MATEP's discovery requests complied with the then-existing Electronic Clerk's Notes, which correctly reflected that Judge Stearns had only adopted portions of the proposed scheduling order at the June 6, 2005 scheduling conference.

(5) After receiving Attachment "C", counsel for plaintiff Lill apparently then talked to the clerk ex parte, and prevailed upon the clerk to modify the then-existing Electronic Clerk's Notes, which modification (attached as Attachment "D" to this motion) now indicated that Judge Stearns had adopted all of the proposed schedule.

(6) Having effected this ex parte modification, counsel for Lill then announced in a letter dated December 16, 2005 (attached as Attachment "E" to this motion) that defendant MATEP's discovery requests were "rejected" by the plaintiff Lill.

(7) Allowing MATEP's discovery requests can have no effect on the overall schedule of this case, as discovery (for counts IV and V) only has to be completed by March 2, 2006.

(8) A Local Rule 7.1 and Local Rule 37.1 conference was held by telephone on this issue on Wednesday, December 21, 2005. The telephone conference was attended by Leonard Zamansky, Esq., counsel for the plaintiff, and John Connolly, Esq. and Michael Meyer, Esq., both counsel for the defendant. The telephone conference lasted

approximately 10 minutes, and occurred at approximately 10:00 AM. The sole issue discussed was the timeliness or not of defendant MATEP's discovery requests, as discussed above, and no agreement was reached on this one issue.

WHEREFORE, regardless of the correctness (or not) of the December 15, 2005 correction of the Electronic Clerk's Notes, as MATEP's discovery requests were timely filed under the then-existing version of the Electronic Clerk's Notes, defendant MATEP respectfully moves that the court issue an order ruling MATEP's discovery requests timely filed.

Respectfully Submitted,  
MEDICAL AREA TOTAL ENERGY  
PLANT, INC.

By its attorneys:

*Michael B Meyer  
Catherine Keuthen*

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Michael B. Meyer  
BBO #344440  
John M. Connolly  
BBO #095186  
Catherine J. Keuthen  
BBO #373620  
Meyer, Connolly, Sloman  
& Macdonald LLP  
12 Post Office Square, 5<sup>th</sup>  
Floor  
Boston, Massachusetts 02109  
(617) 423-2254

*Timothy Cronin MSM*

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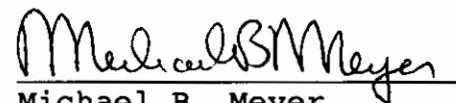
Timothy Cronin  
BBO #549333  
Legal Department  
NSTAR Electric Company  
800 Boylston Street  
Boston, Massachusetts 02199  
(617) 424-2104

December 21, 2005

CERTIFICATE PURSUANT TO  
LOCAL RULE 7.1  
AND LOCAL RULE 37.1

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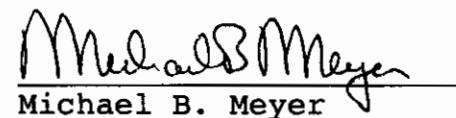
Pursuant to Local Rule 7.1 and Local Rule 37.1 of the United States District Court for the District of Massachusetts, I hereby certify that I have conferred with counsel for the plaintiff and have attempted in good faith to resolve or narrow the issue.

  
Michael B. Meyer  
Michael B. Meyer

December 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for the plaintiff Frank Lill & Son, Inc. both by electronic facsimile and by postage prepaid, first class mail.

  
Michael B. Meyer  
Michael B. Meyer

December 21, 2005

A

**From:** ECFnotice@mad.uscourts.gov  
**Subject:** Activity In Case 1:05-cv-10122-RGS Frank Lill & Son, Inc. v. Medical Area Total Energy Plant, Inc. "Scheduling Conference"  
**Date:** June 8, 2005 11:23:36 AM EDT  
**To:** CourtCopy@mad.uscourts.gov

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

**United States District Court**

**District of Massachusetts**

**Notice of Electronic Filing**

The following transaction was received from Johnson, Mary entered on 6/8/2005 at 11:23 AM EDT and filed on 6/6/2005

**Case Name:** Frank Lill & Son, Inc. v. Medical Area Total Energy Plant, Inc.

**Case Number:** 1:05-cv-10122

**Filler:**

**Document Number:**

**Docket Text:**

Electronic Clerk's Notes for proceedings held before Judge Richard G. Stearns : Scheduling Conference held on 6/6/2005. Attys. McNamara, Lensamansky, and Connolly(by telephone) present for the pltf. Attys. Meyer and Keuthen presentfor the deft. The case will be referred to the Court's mediation panelas to Counts 1, 2, and 3 of the Complaint. As to Counts 4 and 5,discovery will proceed as follows: all discovery shall be completed by 3-2-06;all depositions shall be completed by 3-2-06. By 12-2-05, pltf. shallidentify its experts and serve report; by 1-16-06, deft. shall identifyits experts and serve report. Dispositive motions shall be filedby 4-28-06. Oppositions to be filed by 5-26-06. (Court Reporter None.) (Johnson, Mary)

The following document(s) are associated with this transaction:

**1:05-cv-10122 Notice will be electronically mailed to:**

John M. Connolly jconnolly@meyerconnolly.com, jmc@meyerconnolly.com

Catherine J. Keuthen ckeuthen@meyerconnolly.com

John J. McNamara jmnamara@dlandm.com

**1:05-cv-10122 Notice will not be electronically mailed to:**

Martha A. Connolly  
Ernstrom & Dreste, LLP

**180 Canal View Blvd  
Suite 600  
Rochester, NY 14623**

**Michael B. Meyer  
Meyer, Connolly, Sloman & MacDonald, LLP  
5th Floor  
12 Post Office Square  
Boston, MA 02109**

**Leonard D. Zamansky  
Domestico, Lane & McNamara, LLP  
161 Worcester Road  
Framingham, MA 01701**

		Inc..(Flaherty, Elaine) (Entered: 04/13/2005)
J9/2005	5	NOTICE of Scheduling Conference. Scheduling Conference set for 6/6/2005 04:00 PM in Courtroom 21 before Judge Richard G. Stearns. (Johnson, Mary) (Entered: 05/10/2005)
05/25/2005	6	MOTION for Leave to Appear Pro Hac Vice by Martha Connolly Filing fee \$ 50., receipt number 64505. by Frank Lill & Son, Inc..(Flaherty, Elaine) (Entered: 05/26/2005)
05/26/2005		Judge Richard G. Stearns : Electronic ORDER entered granting 6 Motion for Leave to Appear Pro Hac Vice Added Martha A. Connolly for Frank Lill & Son, Inc. (Flaherty, Elaine) (Entered: 05/26/2005)
05/31/2005	7	NOTICE of Appearance by Leonard D. Zamansky on behalf of Frank Lill & Son, Inc. (Flaherty, Elaine) (Entered: 05/31/2005)
06/01/2005	8	JOINT STATEMENT re scheduling conference, filed. (Flaherty, Elaine) (Entered: 06/02/2005)
06/01/2005	9	CERTIFICATION pursuant to Local Rule 16.1 by Frank Lill & Son, Inc..(Flaherty, Elaine) (Entered: 06/02/2005)
06/01/2005	10	CERTIFICATION pursuant to Local Rule 16.1 by Medical Area Total Energy Plant, Inc..(Flaherty, Elaine) (Entered: 06/02/2005)
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<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
06/08/2005 12:16:35			
<b>PACER Login:</b>	mc0301	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:05-cv-10122-RGS
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16

**ERNSTROM  
&DRESTE  
LLP**

80 CANAL VIEW BOULEVARD  
SUITE 600  
ROCHESTER, NY 14623  
PHONE 585-473-3100  
FAX 585-473-3113

December 8, 2005

B

**VIA FAX TRANSMISSION  
AND REGULAR MAIL**

Michael M. Meyer, Esq.  
MEYER, CONNOLLY, SLOMAN & MACDONALD, LLP  
12 Post Office Square  
Boston, MA 02109

Timothy N. Cronin, Esq.  
NSTAR Electric & Gas Company  
800 Boylston Street P1700  
Boston, MA 02199

Re: Frank Lill & Son, Inc. v. Medical Area Total Energy Plant, Inc.  
Civ. Action No.: 05-cv-10122

Counselors:

On June 1, 2005, a Joint Statement Pursuant to Local Rule 16.1, signed by counsel for both parties, was filed in this matter. A copy is annexed for your convenience. During our conference with Judge Stearns on June 6, 2005, he indicated that he approved of this joint plan.

Under the terms of that plan, the parties agreed that the deadline for serving interrogatories, document requests and requests for admissions would be October 5, 2005. Further, the parties agreed that the deadline for responding to such discovery requests would be November 30, 2005. As you are aware, I have complied with the agreements set forth in this plan, as I served Plaintiff's discovery notices prior to the October 5, 2005 deadline.

Yesterday, you served via fax, Defendant's First Request for Production of Documents. Today, you served via fax, Defendant's First Set of Interrogatories. I am at a loss to understand why you are serving interrogatories and document requests at this late date, more than 60 days after the agreed upon deadline and without so much as the courtesy of requesting an extension of the deadline.

If I am unaware of some local rule that allows MATEP to serve its discovery requests outside of agreed upon deadlines, please so advise me immediately. Otherwise, I am forced to reject your discovery requests as untimely.

Very truly yours,

Martha A. Connolly

Enclosure

pc: Domestico, Lane & McNamara, LLP  
Frank Lill & Son, Inc.

NEW YORK, NY  
WASHINGTON, DC  
UPPER SADDLE RIVER, NJ

Case 1:05-cv-10122-RGS Document 8 Filed 06/01/2005 Page 1 of 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No.: 05-10122 RGS

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FRANK LILL & SON, INC., )  
Plaintiff, )  
v. )  
MEDICAL AREA TOTAL ENERGY )  
PLANT, INC., )  
Defendant. )  
)

---

JOINT STATEMENT PURSUANT TO LOCAL RULE 16.1

Pursuant to United States District Court Local Rule 16.1, and the Court's Order dated May 9, 2005, the parties propose the following joint statement:

I. PROPOSED JOINT DISCOVERY PLAN.

A. PHASE I.

Overall Discovery Deadline: March 2, 2006.

Interrogatories/Documents/Requests for Admissions:

Last day to serve requests: October 5, 2005;

Last day to serve responses to requests: November 30, 2005.

Depositions:

Last day to serve notice (except for experts): December 30, 2005;

Last day to conduct depositions: March 2, 2006.

B. PHASE II.

Experts:

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90 days before discovery deadline (12/2/2005), plaintiff to identify expert and serve expert's written report (unless waived);

45 days before discovery deadline (1/16/2006), defendant to identify expert and serve expert's written report (unless waived);

30 days before discovery deadline (1/31/2006), each party to identify rebuttal experts and serve rebuttal expert's written report (unless waived).

Depositions of Experts completed by March 2, 2006.

**II. PROPOSED MOTION SCHEDULE.**

A. Venue and Jurisdiction Motions shall be filed within 60 days of the Order.

B. Motions for Joinder of Parties shall be filed within 60 days of the Order.

C. Dispositive Motions and Motions to Preclude expert testimony shall be filed on or before April 28, 2006.

D. Opposition/Cross Motions shall be filed on or before May 26, 2006.

**III. TRIAL.**

Trial in September 2006.

**IV. CERTIFICATIONS.**

Attached hereto are Certifications affirming that the parties and their counsel have conferred with a view to establishing a budget for costs of conducting the litigation and to consider alternative methods of dispute resolution.

Case 1:05-cv-10122-RGS Document 8 Filed 06/01/2005 Page 3 of 3

MEDICAL AREA TOTAL

ENERGY PLANT, INC.,  
By its attorneys,

*Michael Meyer  
John M. Connolly*  
Michael B. Meyer  
BBO #344440  
John M. Connolly  
BBO #095180  
Catherine J. Keuthen  
BBO #373620  
Meyer, Connolly, Sloman  
& MacDonald LLP  
12 Post Office Square  
Boston, MA 02109  
(617) 423-2254

FRANK LILL & SON, INC.,  
By its attorneys,

*Leonard D. Zamansky*  
John J. McNamara  
BBO #557882  
Leonard D. Zamansky  
BBO #630206  
Domestico, Lane & McNamara, LLP  
161 Worcester Road  
Framingham, MA 01701  
(508) 626-9000

C

MEYER, CONNOLLY, SLOMAN & MACDONALD LLP

MICHAEL B. MEYER  
JOHN M. CONNOLLY  
RODERICK L. MACDONALD  
LEONARD M. SIMONS  
CATHERINE J. KEUTHEN

ATTORNEYS AT LAW  
12 POST OFFICE SQUARE  
BOSTON, MASSACHUSETTS 02109  
(617) 423-2254  
FAX (617) 426-4687

SUSAN F. SCHWARTZ  
Of Counsel

mmeye@meyerconnolly.com

December 9, 2005

Martha Connolly, Esq.  
Ernststrom & Dreste, LLP  
180 Canal View Boulevard  
Suite 600  
Rochester, New York 14623

Re: Lill v. MATEP, U.S.D.C., D. Mass.  
Civil Action No. 05-10122 RGS

Dear Ms. Connolly:

Thank you for your letter of December 8, 2005. For your convenience, I enclose a copy of the electronic clerk's notes of the June 6, 2005 scheduling conference in the above-captioned case. These notes plainly indicate the portions of the proposed schedule that Judge Stearns did (and did not) adopt. It is odd that you did not refer to these electronic clerk's notes, which are an official portion of the docket in this case, in your December 8, 2005 letter; perhaps you were unaware of them.

Judge Stearns did not, as you incorrectly claim, approve the proposed schedule in its entirety. For example, the proposed schedule covered all five counts of Lill's complaint, but Judge Stearns' order only set a discovery schedule for counts IV and V. The portions of the proposed schedule which were not approved have no force and effect, and the Federal Rules of Civil Procedure govern in their absence.

I hope this letter has cleared up your confusion in this matter. MATEP expects Lill to respond properly to MATEP's discovery requests.

Very truly yours,



Michael B. Meyer

cc(w/encl): John McNamara, Esq.  
Leonard Zamansky, Esq.

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**Case Number:** 1:05-cv-10122

**Filer:**

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Catherine J. Keuthen ckeuthen@meyerconnolly.com

John J. McNamara jmnamara@dlandm.com

**1:05-cv-10122 Notice will not be electronically mailed to:**

Martha A. Connolly  
Ernstrom & Dreste, LLP

**180 Canal View Blvd  
Suite 600  
Rochester, NY 14623**

**Michael B. Meyer  
Meyer, Connolly, Sloman & MacDonald, LLP  
5th Floor  
12 Post Office Square  
Boston, MA 02109**

**Leonard D. Zamansky  
Domestico, Lane & McNamara, LLP  
161 Worcester Road  
Framingham, MA 01701**

		Inc..(Flaherty, Elaine) (Entered: 04/13/2005)
09/2005	5	NOTICE of Scheduling Conference. Scheduling Conference set for 6/6/2005 04:00 PM in Courtroom 21 before Judge Richard G. Stearns. (Johnson, Mary) (Entered: 05/10/2005)
05/25/2005	6	MOTION for Leave to Appear Pro Hac Vice by Martha Connolly Filing fee \$ 50., receipt number 64505. by Frank Lill & Son, Inc..(Flaherty, Elaine) (Entered: 05/26/2005)
05/26/2005		Judge Richard G. Stearns : Electronic ORDER entered granting 6 Motion for Leave to Appear Pro Hac Vice Added Martha A. Connolly for Frank Lill & Son, Inc. (Flaherty, Elaine) (Entered: 05/26/2005)
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06/08/2005 12:16:35			
PACER Login:	mc0301	Client Code:	
Description:	Docket Report	Search Criteria:	1:05-cv-10122-RGS
Billable Pages:	2	Cost:	0.16

ADR

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:05-cv-10122-RGS**

Frank Lill & Son, Inc. v. Medical Area Total Energy Plant, Inc.  
 Assigned to: Judge Richard G. Stearns  
 Cause: 28:1332 Diversity-Contract Dispute      Date Filed: 01/19/2005  
 Jury Demand: None  
 Nature of Suit: 190 Contract: Other  
 Jurisdiction: Diversity

**Plaintiff****Frank Lill & Son, Inc.**

represented by **John J. McNamara**  
 Domestico, Lane & McNamara, LLP  
 161 Worcester Road  
 Suite 302  
 Framingham, MA 01701  
 508-626-9000  
 Fax: 508-626-9001  
 Email: jmcnamara@dlandm.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Leonard D. Zamansky**  
 Domestico, Lane & McNamara, LLP  
 161 Worcester Road  
 Framingham, MA 01701  
 508-626-9000  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Martha A. Connolly**  
 Ernstrom & Dreste, LLP  
 180 Canal View Blvd  
 Suite 600  
 Rochester, NY 14623  
 585-473-3100  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Medical Area Total Energy Plant,  
Inc.**

represented by **Catherine J. Keuthen**  
 Meyer, Connolly, Sloman &  
 MacDonald, LLP  
 12 Post Office Square  
 Boston, MA 02109

617-423-2254  
 Fax: 617-426-4687  
 Email: ckeuthen@meyerconnolly.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**John M. Connolly**  
 Meyer, Connolly, Sloman &  
 MacDonald, LLP  
 5th Floor  
 12 Post Office Square  
 Boston, MA 02109  
 617-423-2254  
 Fax: 617-426-4687  
 Email: jconnolly@meyerconnolly.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael B. Meyer**  
 Meyer, Connolly, Sloman &  
 MacDonald, LLP  
 5th Floor  
 12 Post Office Square  
 Boston, MA 02109  
 617-423-2254  
 Fax: 617-426-4687  
 Email: mmeyer@meyerconnolly.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Timothy N. Cronin**  
 NSTAR Electric & Gas Company  
 800 Boylston Street P1700  
 Boston, MA 02199  
 617-424-2104  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Mediator**

**James McGuire**

Date Filed	#	Docket Text
01/19/2005	1	COMPLAINT against Medical Area Total Energy Plant, Inc. Filing fee: \$ 150, receipt number 61536, filed by Frank Lill & Son, Inc.. (Attachments: # 1 # 2)(Flaherty, Elaine) (Entered: 01/26/2005)
01/19/2005		Summons Issued as to Medical Area Total Energy Plant, Inc.. (Flaherty, Elaine) (Entered: 01/26/2005)

## District of Massachusetts Version 2.5 - Docket Report

Page 3 of 4

01/19/2005		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Alexander. (Flaherty, Elaine) (Entered: 01/26/2005)
03/21/2005	2	WAIVER OF SERVICE Returned Executed Medical Area Total Energy Plant, Inc. waiver sent on 3/4/2005, answer due 5/3/2005. (Flaherty, Elaine) (Entered: 03/22/2005)
04/04/2005	3	ANSWER to Complaint by Medical Area Total Energy Plant, Inc.. (Flaherty, Elaine) (Entered: 04/08/2005)
04/13/2005	4	Amended ANSWER to Complaint by Medical Area Total Energy Plant, Inc..(Flaherty, Elaine) (Entered: 04/13/2005)
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06/01/2005	9	CERTIFICATION pursuant to Local Rule 16.1 by Frank Lill & Son, Inc..(Flaherty, Elaine) (Entered: 06/02/2005)
06/01/2005	10	CERTIFICATION pursuant to Local Rule 16.1 by Medical Area Total Energy Plant, Inc..(Flaherty, Elaine) (Entered: 06/02/2005)
06/06/2005		Electronic Clerk's Notes for proceedings held before Judge Richard G. Stearns : Scheduling Conference held on 6/6/2005. Attys. McNamara, Lensamansky, and Connolly (by telephone) present for the pltf. Attys. Meyer and Keuthen present for the deft. The case will be referred to the Court's mediation panel as to Counts 1, 2, and 3 of the Complaint. As to Counts 4 and 5, discovery will proceed as follows (the Court having adopted the Joint Schedule filed by counsel): all discovery shall be completed by 3-2-06; all depositions shall be completed by 3-2-06. By 12-2-05, pltf. shall identify its experts and serve report; by 1-16-06, deft. shall identify its experts and serve report. Dispositive motions shall be filed by 4-28-06. Oppositions to be filed by 5-26-06. (Court Reporter None.) (Johnson, Mary) Modified on 6/8/2005 (Johnson, Mary). Modified on 12/15/2005 (Johnson, Mary). (Entered: 06/08/2005)
06/22/2005	11	Judge Richard G. Stearns : Electronic ORDER entered. REFERRING CASE to Alternative Dispute Resolution, as toCounts 1 and 3 only.

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		(Johnson, Mary) (Entered: 06/22/2005)
06/22/2005		Notice of correction to docket made by Court staff: Case referred to ADR as to Counts 1, 2 and 3 of the Complaint. Mary Johnson, Deputy Clerk. (Entered: 06/22/2005)
07/21/2005		ELECTRONIC NOTICE of assignment to ADR Provider. ADR Panel member James E. McGuire appointed mediator. (Franklin, Yvonne) (Entered: 07/21/2005)
07/21/2005		ELECTRONIC NOTICE of ADR Conference. Alternative Dispute Resolution Hearing with principals present set for 10/12/2005 at 10:00 AM before ADR Panel member James E. McGuire. Mediation will be held at JAMS, One Beacon St., Suite 2300, Boston, MA 02108. Confidential mediation memoranda should be submitted five days prior to the mediation and sent directly to Mr. McGuire at the address listed above.(Franklin, Yvonne) (Entered: 07/21/2005)
08/23/2005	12	NOTICE of Appearance by Timothy N. Cronin on behalf of Medical Area Total Energy Plant, Inc. (Flaherty, Elaine) (Entered: 08/24/2005)
10/11/2005		ELECTRONIC NOTICE of ADR Conference: The 10/12/2005 mediation hearing scheduled before ADR Panel member James E. McGuire has been POSTPONED. Alternative Dispute Resolution Hearing will be rescheduled at a later date. (Franklin, Yvonne) (Entered: 10/11/2005)
12/09/2005	13	MOTION for Extension of Time to January 4, 2006 to respond to plaintiff's first set of interrogatories and its first request for production of documents by Medical Area Total Energy Plant, Inc.. (Attachments: # 1 Exhibit A)(Connolly, John) (Entered: 12/09/2005)
12/15/2005		Notice of correction to docket made by Court staff. Correction: court notes of 6-6-05 corrected because: court clerk neglected to add to court notes that the Joint Statement filed by counsel was adopted by the Court. (Johnson, Mary) (Entered: 12/15/2005)

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**DOMESTICO, LANE & McNAMARA, LLP**  
**COUNSELLORS AT LAW**

THE MEADOWS  
 161 WORCESTER ROAD  
 FRAMINGHAM, MASSACHUSETTS 01701

TELEPHONE (508) 626-9000  
 FACSIMILE (508) 626-9001

CHARLES J. DOMESTICO  
 PAUL M. LANE  
 JOHN J. McNAMARA

CDOMESTICO@CLandM.COM  
 PLANE@CLandM.COM  
 JMcNAMARA@CLandM.COM

BRENDAN M. O'ROURKE  
 ERIC A. HOWARD  
 MYLES C. BELTRAM  
 LEONARD D. ZAMANSKY  
 MATTHEW A. FOYTIN

BOROURKE@CLandM.COM  
 EHOWARD@CLandM.COM  
 MBELTRAM@CLandM.COM  
 LZAMANSKY@CLandM.COM  
 MFOYTIN@CLandM.COM

December 16, 2005

**VIA FACSIMILE TO (617) 426-4687**

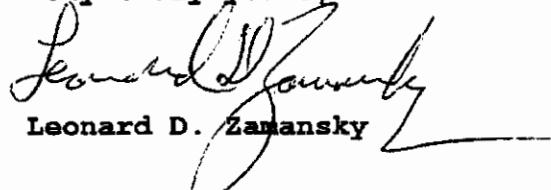
Michael B. Mayer, Esquire  
 Meyer, Connolly, Sloman & MacDonald, LLP  
 12 Post Office Square  
 Boston, MA 02109

**Re: Frank Lill & Son, Inc. v. Medical Area Total Energy  
 Plant, Inc.; U.S. District Court for the District of  
 Massachusetts; C.A. No. 05-10122 RGS**

Dear Attorney Meyer:

I spoke with the Clerk, Mary Johnson, who confirmed that the deadlines in the Joint Statement, including the October 5, 2005 deadline to serve discovery requests, are in effect. Accordingly, your discovery requests, served on December 7<sup>th</sup> and 8<sup>th</sup>, 2005 are rejected.

Very truly yours,

  
 Leonard D. Zamansky

Cc: Charles G. Lill, President  
 Martha A. Connolly, Esq.  
 John J. McNamara, Esq.